UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 12 Cr. 981 (AKH)

ERIC PROKOPI,

Defendant.

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New York, New York
June 3, 2014
11:25 a.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: MARTIN BELL
Assistant United States Attorney

GEORGES G. LEDERMAN
Attorney for Defendant

(In open court)

(Case called)

MR. BELL: Martin Bell for the government. With me, with the Court's permission is, Colin Ross a summer intern from our office.

THE COURT: I gladly grant permission.

How are you, Mr. Ross.

MR. ROSS: Good. Thank you, your Honor.

THE COURT: Is Mr. Bell showing you a good time?

MR. ROSS: Very much so, your Honor.

MR. LEDERMAN: Good morning, your Honor. George Lederman, for defendant Eric Prokopi.

THE COURT: Good morning, Mr. Lederman, and good morning, Mr. Prokopi.

THE DEFENDANT: Good morning.

THE COURT: Everyone can be seated.

Mr. Prokopi, have you had an opportunity to read the presentence investigative report?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Lederman, are there any factual objections to be presented to me?

MR. LEDERMAN: No, your Honor.

THE COURT: Does the government have any?

MR. BELL: No, your Honor.

THE COURT: I notice in the presentence investigative report, an addendum submitted to me on May 27, there is a number of objections.

Have they been ironed out, Mr. Lederman?

MR. LEDERMAN: Yes, your Honor, they have.

THE COURT: So there's been a subsequent PSR?

MR. LEDERMAN: No, I think they are incorporated in the PSR itself and the addendum is for this Court's review, but there's nothing that's been done subsequent to the submission of the addendum.

MR. BELL: Your Honor, I believe that the responses laid out on pages 21 and 22 concerning the defendant's objections as incorporated are sufficient. To the extent that those indicate ongoing differences of opinion on any topic, I am happy to address those. I am not certain.

THE COURT: I would like you to address them. Because they go to the extent of culpability of Mr. Prokopi.

MR. BELL: Sure.

THE COURT: Mr. Prokopi suggests that he is an innocent with regard to the provenance of the dinosaurs.

MR. BELL: I believe, your Honor --

THE COURT: His fault was a few misstatements in the customs declarations, but that he didn't have an idea that the dinosaurs came out of Mongolia in violation of the laws of Mongolia.

MR. BELL: Your Honor, I actually think that

Mr. Prokopi's current position doesn't go quite that far. On page 21, where it references paragraph 10, Mr. Prokopi's counsel does indicate that he knew that he transported fossils that were taken from Mongolia in a manner contrary to law.

THE COURT: What does that mean?

MR. BELL: That means that it was essentially illegal for them to leave Mongolia without the Mongolian government's permission.

THE COURT: The point is not technical, Mr. Bell. My concern has to do with the extent to which there is acceptance of responsibility. Someone who is fudging what happened in my mind doesn't have a clear sense of his own responsibility for his crimes.

MR. BELL: I understand that, your Honor.

THE COURT: That bothers me.

MR. BELL: What I say, your Honor --

THE COURT: It bothers me also -- so Mr. Lederman knows this -- that Mr. Prokopi refused to say anything when he was interviewed by the probation department, and he says he's resting on his plea. But the plea allocution is as bare bones as I've seen. I didn't take this for whatever reason, I don't remember, I guess I was otherwise engaged at the time, but I would never have allowed a defendant to plead in that context without eliciting a great many more contextual facts. So his bare-bones allocution is sufficient to sustain the plea, but not more. And the way he has objected to the statements to the probation officer lead me to have reservations whether or not he clearly accepted responsibility.

MR. BELL: Your Honor, from the government's standpoint I would say a couple of things. The first thing that I would note is, to the extent there is a difference between Mr. Prokopi's recognition that the dinosaurs were in fact stolen and Mr. Prokopi's recognition, I guess in another scenario, that the dinosaurs were taken from Mongolia in a fashion contrary to law, the government does not have any reason to believe that the former is more true than the latter based on the case that it was able to develop.

So, to the extent that the reality is that Mr. Prokopi just realizes that he shouldn't have taken them out of Mongolia as opposed that being deeply rooted in Mongolia's patrimony laws that were passed in 1924, there's not very much more that we can add here. I would imagine this only pertains to the one count involving the transportation of property, either stolen or converted.

THE COURT: Of course, that's the major one.

MR. BELL: With respect to the conversion, your Honor, what I would submit is that, to the extent that they were taken out contrary to Mongolia's strict laws concerning natural resources, they satisfied the conversion prong in any event. But I understand your Honor's concern more to be just about does this actually get to the hilt of the defendant's knowing conduct. The government does not have reason to believe that there is necessarily more, that there is more within the case that we developed that suggests that Mr. Prokopi was explicitly aware of the Mongolian laws that rather than simply not giving people permission to remove dinosaurs out of the country actually render all of the natural things under the grounds the property of Mongolia, if that makes sense, your Honor.

THE COURT: Look, that is all you need to convict, but what I understand is the fact of the matter is that these become available on the so-called open market because they are stolen merchandise. They are not purchased through dealers. The device is not a taking from someone else after paying the value at some kind of an open auction. These goods, generally speaking, are stolen and so on the black market they get out from the country and people make money on the basis of this. That's the device. That's what our laws are trying to protect against.

MR. BELL: It is, your Honor, although we, and we noted this a number of times before Judge Castel in the parallel civil action as well. As black market enterprises go, this one is a little unusual and not simply because it involves Tyrannosaurus bones. It is a little unusual because for the most part it is a black market that has thrived in plain sight, owing among other things to lack of enforcement. And I think the government's only recently realizing the contours of that black market and what it is. So, unlike other stolen property, where you have your standard sort of earmarks of such thing, a high level of secrecy and the like, these items, stolen though they may be, are frequently sold at large fairs, the existence of which people are aware.

THE COURT: Everyone averts his eyes.

MR. BELL: I think there's something to that. I think there is something to that. I think that's right. There is a combination of people who understand what the laws are or at the very least that the permissions probably haven't been granted, because the fact remains that Mongolia hasn't allowed -- has enforced these laws and hasn't allowed dinosaur fossils out of the country. I think there are also people who enter the fairs with a less nuanced sense of the laws, but some sense that, OK, if there were ever were to be scrutiny, perhaps this is a business that we shouldn't be involved in, but that scrutiny hasn't existed for sometime. I offer all of this, your Honor, not by way of argument one way or other, but just by way of background. I don't know if Mr. Lederman has anything to add to that.

MR. LEDERMAN: If I may, your Honor?

THE COURT: Yes.

MR. LEDERMAN: Addressing the issue, your Honor, of my client's acceptance, I think it is very fact specific here as to what my client did know. I was going to make this point in my statement, but I would like to make it now as well, is that my client operated under the assumption that, as long as the permits were given to individuals, that they could legally export these artifacts under Mongolian law. In fact, where my client went awry is that in this specific case as to the Tyrannosaurus bataar, upon learning when it was in transit that the permits were not in place, that he then facilitated, notwithstanding that, their entry into the United States by means of making false statements.

So he did have that recognition at the time once they left that nation. But, given the fact that, for example, as recently as 2009 a foreign tourist could go into the gift shop of the national museum store and buy dinosaur fossils, it led to an understanding, perhaps not clear, as to what the law was, and therefore the confusion that led to the export illicitly of these artifacts.

THE COURT: I have to feel, Mr. Lederman, that if Mr. Prokopi lied on the customs declaration form, he lied to cover up something, some uncomfortable knowledge, and that uncomfortable knowledge was that he was importing something against the law. The falsity of the declarations seems to confirm that perspective.

MR. LEDERMAN: We do not contest that, Judge.

THE COURT: You seem to even today.

MR. LEDERMAN: I want to be clear about that.

THE COURT: You seem to.

MR. LEDERMAN: If that is what I am trying to say, I don't mean to, because he fully understood that once they were exported they were exported in a manner contrary to that nation's laws. But the context, again, as Mr. Bell has explained, is that this was very unclear, but upon learning that he did not have the permission that had been issued in the past, that it was at that point that he committed the crime. He accepts that.

THE COURT: I have trouble following that. No one in this business takes things or buys things without looking at the provenance of an item. You are not buying a fake in a store. You are not buying a copy of a piece of art. You are buying something because of its quality as a fossil.

MR. LEDERMAN: I understand.

THE COURT: Your client was an expert at that. So much so that he had the ability to create an exact replica of a dinosaur from these fossils, and he did to great value. Given the cost, given the selling price, and given the time he put into it, he was earning something like a thousand dollars an hour. I bet you don't earn that.

Your Honor, also if I just may respond briefly to his not making a statement in the PSR, my client met for hours with Mr. Bell and Homeland Security and gave a host of information that I think Mr. Bell will speak to.

THE COURT: I understand that. That is going to be the subject of a motion under Section 5K2 --

MR. LEDERMAN: Yes. I thought in light of that that it would be best to rest on what Mr. Bell would write in the 5K.

THE COURT: I think we have exhausted that point. You know my feeling, Mr. Lederman.

MR. BELL: Your Honor, you mentioned a point of distinction, and again this is just context, but the circumstances are sufficiently unusual that I think the context is important here.

A brief narrative may be helpful. My understanding is that the dinosaur fossils at issue here, and there were a lot of them, were originally taken from the ground in an operation led by a single Mongolian.

THE COURT: In the Gobi Desert.

MR. BELL: In the Gobi Desert, that's correct, specifically near what is called the Nemegt Basin. It is an unusually fossil-rich region of Mongolia. Frankly, it would appear -- I have learned a lot over the case your, Honor -- unique in the world. That individual -- who actually died as I understand it before our investigation really got going -- that individual was undoubtedly aware of Mongolia's laws regarding natural resources, government property.

Mr. Prokopi and another individual reached out to, or made contact with this individual and bought a large number of fossils for, I think it was a combined $200,000. They visited Mongolia, they saw the merchandise, and they had this merchandise shipped over in multiple shipments to Great Britain, which was where Mr. Prokopi's business partner resided. He is sort of a fossil collector as well.

As I understand it from our debriefings of Mr. Prokopi, it was at that point, while they were divvying up these fossils, that the realization was made that the fossils were sent without the necessary permits. Whether that understanding necessarily entails an understanding of Mongolia's sort of patrimony laws is its own issue, but at that point the defendant undoubtedly realized that they should not have been taken out of Mongolia. At that point, however, he proceeded to send them in multiple shipments to the United States using labels that were at best misleading and in some cases outright inaccurate.

But with respect to Mr. Lederman's point that there is a different sort of point of realization that happens, once you realize that you haven't gotten the permits, as opposed to from the Mongolian national's standpoint, where you know right from the outset that these are not only things that require permits but are in fact stolen, I can understand the distinction that Mr. Lederman is trying to draw.

THE COURT: OK.

I find the facts set out in the presentence investigative report. The analysis of the sentencing guidelines is as follows, the offense level under Section 2B1.5 as a base level of 8. There is an addition of another eight points because the value is $70,000 to $120,000 as calculated here. But I don't understand why it is at that level. It would seem to be to be a higher level.

Another two levels are added under Section 2B1.5(b) because the offense involved a current cultural heritage resource or paleontological resource in that one of the subparagraphs or more of the subparagraphs of Section 2B1.5(b)(2) are invoked.

Another two levels are added because the illegality was for pecuniary gain, and another two levels are added because there was a pattern of misconduct involving cultural heritage resources or paleontological sources. The gross addition comes up to 22 points. Three levels are suggested to be reduced for acceptance of responsibility, yielding a net offense behavior level of 19, which equates, because there are no criminal history points to, a range of custodial punishment of 30 to 37 months, and followed by supervised release of one to three years on Count One, up to one year on Count Two, up to one year on Count Three. So, putting it all together, one to three years.

Do I have it right, Mr. Bell?

MR. BELL: Two small things, your Honor.

One, with respect to paragraph 45, I just want to make sure that the right guidelines provision was cited there. It's 2B1.5(b)(3)(F). I think that your Honor had mentioned two. It is as it is spelled out in the PSR.

THE COURT: It doesn't make any difference.

MR. BELL: Right.

THE COURT: I take your point, and I agree with you.

MR. BELL: To the extent, your Honor, that you mentioned some misgiving with respect to the dollar amount, I didn't know whether you wanted us to be heard or that was just for record purposes.

THE COURT: Well, the distinction between what I am saying and you are saying is the value added by the work done by Mr. Prokopi.

MR. BELL: That's correct, your Honor.

THE COURT: But I don't think it makes a difference, so I will go by what you say.

MR. BELL: Thank you, your Honor.

THE COURT: Any objection or comment, Mr. Lederman.

MR. LEDERMAN: No, your Honor.

THE COURT: I find the guidelines as I read them out.

There is a motion to be made now by Mr. Bell.

MR. BELL: There is, your Honor. The government moves pursuant to Section 5K1.1 of the guidelines for a downward departure in recognition and consideration for Mr. Prokopi's substantial assistance to the government. I have outlined to some degree that assistance in the submission, but if I could be heard on it very briefly.

THE COURT: Yes. Go ahead please.

MR. BELL: Thank you. This, as I mentioned a moment ago, is an unusual case. And Mr. Prokopi's offense here is an unusual offense. But ultimately, this having happened, has proven to be something of a net gain for the overall cause of law enforcement because of two things. I will speak to them both.

One of them is the recovery of the dinosaur fossils that Mr. Prokopi ultimately facilitated. The other is what federal law enforcement generally has gotten to understand concerning this particular black market, one that was sufficiently ignored for a time, that it was, as I mentioned before, essentially able to hide in plain sight.

First, with respect to the dinosaurs recovered, we went into the case -- we the, government -- essentially pursuing information concerning one Tyrannosaurus bataar skeleton, a bataar skeleton that had gone on auction here in Manhattan in 2012 where the Mongolian government sought assistance in recovering what was very clearly a Mongolian dinosaur and one that they hadn't given permission to leave the country.

THE COURT: One they had not given permission?

MR. BELL: Correct, they had not.

In speaking with Mr. Prokopi once he began to communicate with the government, once he sat down with us, and began to cooperate.

THE COURT: One minute.

MR. BELL: Sure.

THE COURT: Go ahead.

MR. BELL: Thank you, your Honor.

In speaking with Mr. Prokopi, we were alerted to the existence of other fossils, also Mongolian government property, of which we hadn't been aware. These included other dinosaur fossils in Mr. Prokopi's possession, at least in his constructive possession, and in the immediate possession of contacts of his that we were also able to recover.

They included a second Tyrannosaurus skeleton, I dinosaur called an Oviraptor, which is an egg-eating thing. I think a number of them stampeded in the 1996 movie "Jurassic Park." It might have been 1992. I was young and awestruck in any event, your Honor.

THE COURT: I missed the movie. Maybe I should go back to see it.

MR. BELL: Every now and then it airs on TNT. I will stop what I am doing, particularly now, your Honor.

There were several other dinosaur fossils that we were able to immediately recover. In addition to that, there were two fossils that were at least in the legal possession of an auction gallery in California that had had dealings with Mr. Prokopi. They included -- I want to make sure I have this right -- what is called an Oviraptor matrix. Let me explain what that is. That is a rock structure in which the bodies of about five Oviraptor dinosaurs were embedded.

Your Honor, I don't know how familiar you are with Rodan, who was well known for the Burghers of Calais, a number of scenes of torture of medieval figures, and they are all sort of huddled together. This piece was the dinosaur equivalent of those. There was also another plant-eating dinosaur --

THE COURT: How so?

MR. BELL: In that a number of them were sort of positioned within the rocks essentially at the moment of their demise.

THE COURT: Oh.

MR. BELL: It is in that sense.

THE COURT: As if they were huddling?

MR. BELL: As if they were huddling, or at least as if they met the same demise by lava flow or what have you.

These were pieces that we were also able to recover. In addition to that, Mr. Prokopi's information confirmed what we heard from another individual, Mr. Prokopi's former business partner, who came forward during this investigation, essentially giving us the same story and offering to enter into an agreement by which, he even though he hadn't violated American laws and was not subject to our jurisdiction, might go about returning the dinosaurs so that they, too, might be returned to Mongolia.

THE COURT: I suppose he had the same problem with English law as Mr. Prokopi has with our law?

MR. BELL: My understanding is that he was subject to some scrutiny as a result of that. I don't think that the investigation came to any real fruition. I suspect that the English authorities were ultimately satisfied once the news came that the dinosaur fossils in his case were returned.

But, all told, your Honor, between the original two Tyrannosauruses, a third one that we got from Mr. Moore, a number of other dinosaurs -- when I was a kid, my favorite was the Ankylosaurus, which had sort of a back of armor and a long knobby tail that was built like a tank. We've got one of throws, and we are returning that to Mongolia.

Over 18 largely complete, if not fully prepped, dinosaur fossils will be returned as a result indirectly or directly of Mr. Prokopi's information to Mongolia, a country which is not only enthusiastic about the possibility of dinosaur tourism based solely on the haul from this case, but which badly seems to need it. That just gives you a sense of the actual things that were able to be repatriated. The initial bataar, the first bataar, the one that was up for auction, was returned to the grateful people of Mongolia in a repatriation ceremony last year.

The other will be returned later on this summer at a ceremony that we intend to make the Court and the Court community as a whole aware of because we will have a couple of display places out. Frankly, it will just be interesting.

That touches on category one.

With respect to category two, Mr. Prokopi's case has been part of what you might call something of a law enforcement renaissance when it comes to this particular field of dealing in stolen fossils. It is fair to say the following, and I can't get in great detail here because a number of these investigations are still pending, there are investigations in the District of Wyoming, in the District of California, and potentially in other places, the Eastern District of New York, that are looking into the provenance and possible illegal importation of other dinosaur fossils.

I should be clear these are not cases that directly implicate Mr. Prokopi in any criminal culpability, but they are cases in which the knowledge that he's given us of this community, which you can imagine is fairly small, has been helpful. I think it's fair to say, as I noted in my submission earlier, that there is probably not an active fossil investigation at this point that doesn't owe on some level to information that Mr. Prokopi has furnished law enforcement with, at least indirectly.

So I wanted to give you a sense of those two broad types of cooperation and benefit that the government has been able to recover both between what we have been able to return to Mongolia and frankly getting federal law enforcement's act together with respect to the policing of this admittedly obscure area.

Mr. Prokopi has come to meetings when we've wanted. He has, so far as we've been able to tell, been candid and truthful. And he's delivered, an actual dinosaur museum being built in Ulan Bator, Mongolia, can speak to that.

For that reason, your Honor, the government moves for a downward departure for Mr. Prokopi pursuant to Section 5K1.1. The crime is a serious one, and we recognize that. These are natural resources that literally cannot be duplicated. You would need, frankly, the sort of power that the movie "Jurassic Park" suggested, but which doesn't exist in reality. We recognize that the crime was serious for that reason.

But Mr. Prokopi's cooperation has been useful, has been fruitful, has been important. For these reasons, your Honor, we believe a downward departure is appropriate.

THE COURT: The motion is granted. It remains for me to decide how it impacts on the sentence.

For that purpose, I will hear Mr. Lederman.

MR. LEDERMAN: Thank you, your Honor.

Only moment before Mr. Prokopi was presented to Magistrate Pitman on October 22, 2012, Mr. Bell, with whom I have had a good working relationship during these last 18 months, asked if I would step inside the witness room outside the magistrate's court for a minute.

And in our brief talk, Mr. Bell -- and I'll try not to misstate him -- said to me that if my client were to provide information regarding this second Tyrannosaurus bataar to which Mr. Bell has alluded, that that information alone, that specific information would go a long way in furtherance of any assistance he might subsequently render.

Within a short time after that, Mr. Prokopi not only provided the government with that information, but as Mr. Bell has already said, he provided them with the knowledge of the existence and the whereabouts of a fossils about which they were not even aware. He was instrumental in recovering those fossils from others who had possession of them, eventually surrendering them in a peaceful way to Homeland Security officers.

I am not going to go into the other aspect of the cooperation. Obviously, Mr. Bell has set it forth eloquently in his 5K. But I do not think it would be too much to say that his cooperation was not just substantial but extraordinary.

As we can tell from the members of the press in court this morning, this case has garnered widespread international media appeal. In that regard, I would just like to briefly attempt to dispel a couple of misconceptions about Mr. Prokopi to the extent that it may impact on sentencing by this Court.

First, the notion that my client is some sophisticated ringleader of an intricate black market smuggling network who himself has dug up bones in the Gobi in the dark of night makes for good press, but just happens not to be true. My client is a simple man who has spent most of his life, his entire life in Florida with his then ex-wife and two young children. He turned what was a child's love and passion of dinosaurs into a craft and a business.

The letters I have submitted in my brief to this Court attest to somebody who has shared his passion not only with his family, but with members of his community, especially its youth. It was never just about the money. He never had any expensive boats, expensive cars, expensive planes, jewelry, jewels, watches, never took expensive trips. The little money he did make, and it was a little only, he then would reinvest into subsequent fossil projects because of the love of his craft. He was able to support his family only in a very modest way. They are in court here, his parents and even his ex-wife in support.

The second thing I would like to try to dispel, although we have already addressed it, is the context in which his crimes, for which he does accept completely, occurred. There has been some confusion about the law abroad, in Mongolia, and to what extent he understood that.

But what is clear and for which he makes, excuse the pun, no bones about it, is that once these items left that nation without the permits that he thought one could obtain and had been obtained in the past, that he nevertheless facilitated their entry into the U.S. by means of false statements.

THE COURT: Why did he make the false statements?

MR. LEDERMAN: Because I think at that point he was committed, and he has committed an offense.

THE COURT: What was the nature of the falsehood?

MR. LEDERMAN: For example, some of the statements listed that the country of origin is Britain when in fact that's not true. That was a means to facilitate their entry into the U.S. Or to characterize the dinosaur fossil as a reptile, that also, while not untrue, is misleading, and he accepts that.

THE COURT: So if he believed that the permits existed to get stuff out of the country --

MR. LEDERMAN: Yes, sir.

THE COURT: -- he wouldn't be saying these things.

MR. LEDERMAN: Yes. That's right, your Honor. That's absolutely right. But that was at the time once they left.

THE COURT: That's the only time you measure it, is at the time. If he believed that they came from the United Kingdom, he shouldn't have pleaded guilty. So he clearly didn't believe that. He didn't believe that. He believed they came out of Mongolia.

MR. BELL: I think I sense just a disconnect.

THE COURT: Mr. Bell. Let me, please.

MR. BELL: Sure.

THE COURT: We are going back to the same point. You are an advocate, Mr. Lederman. It is not your business to expand the culpability of your client. It is often your business to diminish it.

But at this point one of the most important criteria that affects me in sentencing is the extent to which the defendant understands what he did and the extent of his culpability, because without that understanding there is no chance of a change of behavior. That is important to me in sentencing.

So when you try to parse the words too carefully, I get the feeling that your client still hasn't fessed up to what he did.

MR. LEDERMAN: I think, your Honor, if I may, I think I have tried to be as precise and not parse.

THE COURT: Maybe candor is a little more useful.

MR. LEDERMAN: I think that my client will speak to that as well. If I may proceed?

THE COURT: You are his lawyer. I'm listening carefully to what you say.

MR. LEDERMAN: OK.

THE COURT: Mr. Bell, did you want to say something?

MR. BELL: I did, your Honor.

It doesn't seem to me as though Mr. Prokopi through Mr. Lederman is disputing that the shipment was made.

THE COURT: I will form my own opinions on that.

MR. BELL: Yes, your Honor.

MR. LEDERMAN: Your Honor, I have tried to be candid and I hope I have been, and I know my client will be as well, but he has a brief opportunity to speak.

I did want to say that, as this Court is going to sentence Mr. Prokopi, this Court should be aware of the degree to which he has already been punished indirectly by this case since his arrest and indirectly because of his arrest in this case. He has lost a wife to divorce, who nevertheless is in court here, ex-wife, in support. He has lost a home to effective foreclosure. He has lost a business to fear, whether actual or perceived, by others who no longer will work with him for fear that they will suffer reprisals by the government.

Because of the media frenzy that has surrounded this matter he has suffered a level of public indignity, shame and humiliation that few private individual defendants are ever forced to endure. He will bear that for the rest of his life.

Notwithstanding that, he has done his best to keep his feet on the ground, to support his children, even though he is effectively bankrupt. The probation department has recommended a sentence of 30 months.

THE COURT: The probation department on all cases that I have does not take into consideration the 5K1 letter.

MR. LEDERMAN: Yes.

THE COURT: I have asked them not to because I think that is my responsibility, not theirs.

MR. LEDERMAN: Yes, your Honor. But the report also does not take into account the case law I have cited in my brief, which speaks to similarly situated defendants who have committed similar offenses and who have not rendered assistance and yet who have received a sentence that does not include incarceration.

THE COURT: It is very difficult to compare one defendant to another.

It is important, of course, not to discriminate among similarly situated defendants and to try to treat them as similarly as possible, but judges differ and the contexts of crimes differ. So there is a blend of individualized treatment and an attempt to have some kind of evenness among defendants. I don't know what the others did. I don't know how they did it. I know what the sentencing guidelines are, which are a strong effort to create an equality of treatment, and I know that I've got to take into consideration the substantial cooperation that Mr. Bell told me about. Just how I do it is yet something I have to come to.

In that context I'm listening to what you say very carefully. I read what you said about others. I am affected, but it is not determinative. What is more important to me is to size up Mr. Prokopi and how he feels about what he did and what are the chances of a rehabilitated life.

MR. LEDERMAN: I think, your Honor, that in answering that, which my client will do as well, more specifically, I think he is deeply pained by the harm he has caused, and he wants nothing more than an opportunity to repair whatever damage has occurred in the paleontological field.

It is borne, again, of a compassion and a love of the trade, not of money, not of individual gain. For the reasons set forth by Mr. Bell, and in my memo, I do think that a sentence of probation would be a reasonable exercise of this Court's discretion.

Thank you.

THE COURT: Thank you, Mr. Lederman. Mr. Prokopi, you have the right to address me, but it is not an obligation. It is up to you.

THE DEFENDANT: I would like to apologize to this Court and the government for my actions. What I did was wrong, and I failed to appreciate the gravity of what I had done. My life has been devastated by these mistakes, but I have not lost my love for paleontology and hope to rebuild my business with more emphasis on proper documentation.

THE COURT: Say that again. You have lost your?

THE DEFENDANT: I have not lost my love for paleontology.

THE COURT: You have not lost it? You still love it?

THE DEFENDANT: Yes.

THE COURT: The rest of the sentence, please.

THE DEFENDANT: And I hope to rebuild my business with more emphasis on proper documentation for everything.

I sincerely love fossils, and I was and never will be in it just for the money. I am remorseful for the damage my actions may have caused to hurt the relationship between commercial and academic paleontology.

THE COURT: What damage do you think was caused?

THE DEFENDANT: Just the negative publicity to commercial paleontology. It is not understood. It is hard to explain.

THE COURT: Why is it hard to explain? Commercial paleontology is the sale of fossils for profit.

THE DEFENDANT: Right.

THE COURT: Academic is for the purpose of studying fossils. To the extent that there is a successful commercial market, the academic study is furthered and popularized, so there needn't be a conflict.

THE DEFENDANT: Right. It is my hope --

THE COURT: I think sourcing in an illegal manner may hurt both.

THE DEFENDANT: That's what I am saying. I hope I can repair that, especially what hurt I've caused to the commercial reputation of the commercial field in general. I have never and will never condone destruction of specimens merely for profit. It saddens me that I have been portrayed as a smuggler getting rich from the destruction of important fossil specimens, and nothing could be further from the truth.

THE COURT: You were not accused of destroying anything.

THE DEFENDANT: Not in the Court, but in the press.

THE COURT: That doesn't seem to me what happened. You didn't destroy anything.

THE DEFENDANT: But I have been portrayed that way in a lot of the press. Not me directly, but the diggers in Mongolia improperly excavating specimens.

THE COURT: None of that is before me.

THE DEFENDANT: Right.

A appeal to this Court to accept my sincere apologies for my mistakes. I have learned so much from this experience and hope to move past this and begin to rebuild my business and my life.

THE COURT: Thank you, Mr. Prokopi.

THE DEFENDANT: That's all.

THE COURT: Anything more, Mr. Bell?

MR. BELL: Only to note, your Honor, that when we initially began speaking with Mr. Prokopi and determining whether there was some possibility of cooperation, assessing Mr. Prokopi's culpability was initially a challenge for the government as well, and assessing his acceptance of responsibility was similarly a challenge for the government at that point.

This is particularly the case because it's not the most intuitive of notions that, particularly given our point of entry to the case, frankly, that one could develop an understanding that there was a requirement for permits in order for dinosaur fossils to leave the country, but not necessarily an understanding that they were stolen.

This, however, became surmountable once it became clear that Mr. Prokopi wasn't attempting to dodge responsibility for what happened once the fossils were in England. Once the fossils were in England, he made it clear and was apologetic to us for it that he shouldn't have sent them to the United States because it was clear at that point that these items shouldn't have left Mongolia.

Once that understanding was reached, and it happened at a relatively early stage, although it did take some work to get this speaking with him and understanding exactly the precise series of events, it became easier to contemplate doing business with Mr. Prokopi, using him as a source of information that could help the federal government better enforce the laws against possesssing what is effectively natural contraband.

your Honor, I think he has ably assisted us in doing so and managed to assist us in returning not countless national and natural treasures, but a substantial number of them to the country of Mongolia to boot.

THE COURT: Thank you, Mr. Bell. Is there a forfeiture involved in this case?

MR. BELL: Your Honor, there had initially been a forfeiture component of the case when it was pled by information. That said, subsequent to Mr. Prokopi's plea, he also entered into a stipulation in the related civil matter before Judge Castel in which he agreed to forfeiture. So there is no forfeiture matter outstanding here.

THE COURT: Any restitution?

MR. BELL: No, your Honor. And that is honestly for the same reason.

THE COURT: I need a few minutes, and then I will come back and pronounce sentence. I should note that the plea was taken by Judge Ellis on December 27, 2012. And it was accepted by me January 14 and filed.

I'll be back.

(Recess)

THE COURT: Sentencing is the hardest part of a judge's job. It is hard because the fate of a person's liberty is in a judge's hands, and except for life itself there is nothing more precious than liberty.

So most judges, and I would subscribe to that as well, feel totally inadequate in this aspect of their work. I am given by Congress criteria that I am to use in finding a just sentence. I am told that the nature and circumstances of the offense are to be considered as well as the history and characteristics of the defendant.

Mr. Prokopi is an unusual person. He is following a discipline that not very many people follow. The fact that he's following it and helping to create a market for it is important in the study of fossils, and the study of fossils is important in our understanding of life on earth and where we came as men and women. So he's to be commended for that.

He's led a blameless life. He's been married. He's raised two children. He's responsible. He's clearly not a bad person, but he's done a bad thing. I don't punish him because I think he is a bad person. I punish him because of the act that he did.

So we come to the nature and circumstances of the offense.

In society we all live on trust. We don't know completely our neighbor's makeup or what he does or the degree of his honesty. We think we do sometimes, but we don't. But we all depend on openness and honesty. That is particularly important in relationship to the discipline that Mr. Prokopi has engaged in all his life, because he in effect has made a living on the scarcity of history, and in engaging in this reputation he in fact has committed himself to respect the history and the patrimony of countries offering that history.

His offense is serious. Lying on a government document is serious. He's accused and pleaded guilty, to willfully and knowingly, and with intent to defraud the United States, smuggling and clandestinely inducing and attempting to smuggle and clandestinely introduce into the United States merchandise which should have been invoiced and was passed through the Custom House in a false, forged, and fraudulent manner, and with making false and fraudulent invoices as a way of importing merchandise into the United States, and in transporting transmitting and transferring in interstate and foreign commerce merchandise of a certain value, knowing the same to have been stolen, converted, and taken by fraud.

He's pleaded guilty to those allegations, and I've accepted the plea.

So I need to sentence Mr. Prokopi in a way to reflect the seriousness of the offense and to promote respect for the law and to provide just punishment. These are deterrable crimes. People who work in this field know what defendants do and what happens to them. A sentence that is appropriate to the offense deters not only the defendant himself, but others who committed the same crime.

Therefore, the punishment must deter others and protect the public from further crimes of others and of the defendant, though I think the defendant is not likely to commit additional crimes.

There are other criteria that I can omit, and I'm told in all of this to measure out the sentence that is sufficient but not greater than necessary to comply with the purposes that I have just read out.

I also have to take into consideration the very substantial help that Mr. Prokopi has given to the government, helping the government to enforce these laws, and in finding and returning to the country of origin various important fossils.

So how does a judge take all of this into consideration? I measure this against the range of punishment offered by the guidelines, which are discretionary. I have to consider them, but I'm not bound by them.

Given all that I said, I don't think I need to reach 30 months, which is the bottom of the guidelines, nor 50 percent of that, which is often what I do when there is substantial assistance. But I do think there has to be somewhat of a custodial sentence because that deters people. I don't think it needs to be large, but I think there needs to be something. I think six months is the appropriate amount.

Mr. Lederman, is there a recommendation where it should be served?

MR. LEDERMAN: Your Honor, he currently lives in the state of Virginia. His children are there. So if it would be in that district somewhere where he could surrender.

THE COURT: Where do the children live?

MR. LEDERMAN: In Virginia.

THE COURT: Where in Virginia?

MR. LEDERMAN: In Williamsburg, your Honor.

THE COURT: How old are the children?

MR. LEDERMAN: They are five and six years old.

THE COURT: So I recommend that the custody be as close as possible to Williamsburg, Virginia, to promote visits by his wife and children.

Following custody --

MR. LEDERMAN: Your Honor.

THE COURT: Yes.

MR. LEDERMAN: I'm sorry to interrupt you. Would it be possible for my client to serve the six months as weekends, given his ties to his family?

THE COURT: I think, from my point of view, let me first go through it, and I'll come back to it.

MR. LEDERMAN: Sorry.

THE COURT: There will be a one-year supervised release. The custody and the supervised release will be concurrent on all three charges.

I would like to impose a condition of community service at the rate of 25 hours per quarter. Ideally, I would ask Mr. Lederman to explore with probation if the community services could be done for some museum of natural history or having to do with an ability on the part of Mr. Prokopi to put more of his extensive knowledge into the public benefit.

MR. LEDERMAN: Yes, your Honor, I will inquire.

THE COURT: All of that community service will have to be to the satisfaction of the probation officer who will supervise him.

Let me go back to what you recommend. How do you envision it would work out, Mr. Lederman or Mr. Bell?

MR. BELL: Your Honor, on Mr. Lederman's suggestion, I have actually had cases recently where that's happened, including a sentence before Judge Furman that, like this one, was both a relatively low term, short-term custodial sentence, and involved a defendant who had significant responsibilities in raising children.

As I understand it -- frankly, I could take a moment to look up that case, if it's helpful.

THE COURT: It all goes really to the ability of some community facility to adapt to that.

MR. BELL: My understanding is that that can be done fairly easily.

THE COURT: All right. I will do it this way. The six months can be served -- how do you phrase it, Mr. Lederman, on weekends or during the week?

MR. LEDERMAN: Weekends, I believe. I think weekends, your Honor.

MR. BELL: So it would be a period for whatever number of weekends. I believe that the intervening periods in between would count towards Mr. Prokopi's supervised release as well.

THE COURT: What you are really advocating is a community facility.

MR. BELL: Well --

THE COURT: I could fashion it this way: I can split the sentence three months in custody, three months' community confinement, which would give him the ability to have adjustment for his children. Then followed by a year of supervised release. So technically it would be three months' custody, followed by a year and three months of supervised release, the first three months of which would be community confinement.

MR. BELL: It seems to me, your Honor, there is no legal reason why that sentence couldn't be imposed. I will leave the argumentation to Mr. Lederman, but I think that is a legally cognizable sentence.

THE COURT: You say it is or is not?

MR. BELL: It is.

THE COURT: Yes. That will solve the problems that we are talking about. I don't know if the Bureau of Prisons will adapt to it.

MR. BELL: I suspect that they would, given my own experience.

THE COURT: I would be more comfortable this way. So the sentence will be three months in custody followed by a year and three months of supervised release, the first three months of which will be in community confinement. I will recommend in the community confinement -- can I speak off the record with counsel.

MR. LEDERMAN: Yes, your Honor.

(Discussion off the record at sidebar)

THE COURT: It will be three months of custody followed by a year and three months of supervised release on Count One, to the extent that one year of that supervised release will be concurrent on all counts and three months will be only on Count One.

I will explain that in a minute, but the first three months will be served in community confinement. The statutory maximum for Counts Two and Three is one year -- it's the sentencing guidelines -- one year of supervised release. Count One has three years of supervised release. That's why I've sentenced the three months on Count One and the year concurrent on all counts.

There is no restitution.

I would like to impose a fine of $10,000, but I understand there is a very straitened financial situation.

Can your client come up with $10,000. I can space it out over the year.

MR. LEDERMAN: Your Honor, quite frankly, I don't know when at any time in the future my client would have anything remotely approaching that sum. He is bankrupt.

THE COURT: And he's in debt?

MR. LEDERMAN: And he's in debt in six figures, your Honor.

THE COURT: There will be no fine. There is no ability to pay a fine. No fine would be appropriate in this case.

There's $300 that is mandatory under the law and to be payable on the filing of the judgment.

The conditions for supervised release are as follows. As I said before, the first three months will be in community confinement.

Following that for the balance of the time:

The defendant shall not commit another federal, state or local crime;

The defendant shall not illegally possess a controlled substance;

The defendant shall not possess a firearm or destructive device.

There is no requirement for drug testing.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The 13 standard conditions are imposed.

There is no need for providing access to requested financial information nor limit any credit facilities.

The defendant shall submit his person, residence, place of business, etc., as described in the bottom paragraph on page 25 of the PSR. That is imposed.

Mr. Lederman, I ask you to go to the probation officer today or tomorrow and work out the conditions of probation.

MR. LEDERMAN: Yes, your Honor.

THE COURT: The defendant will be supervised by the district of his residence, which I take it is the Eastern District of Virginia.

Right?

MR. LEDERMAN: Yes, your Honor. I believe so.

THE COURT: I have been somewhat confusing and repetitive in stating the order. Is there any ambiguity left in your mind, Mr. Bell? Is it sufficiently clear?

MR. BELL: As I understand it, you've sentenced Mr. Prokopi effectively to three months' custody, a year and three months' supervised release, the first of those three months to be served in community confinement, if that's the case.

THE COURT: That's it.

MR. BELL: I think we're set.

THE COURT: Mr. Lederman.

MR. LEDERMAN: Yes, your Honor. That's my understanding.

THE COURT: OK. So ordered.

Are there underlying charges?

MR. BELL: There are not, your Honor.

THE COURT: Do you have an information it supersedes?

MR. BELL: No, your Honor. The information was preceded only by a criminal complaint. There was no indictment.

THE COURT: OK. No counts have to be dismissed.

I advise you, Mr. Prokopi, that under the Constitution you have a right to appeal. You are entitled to a lawyer at every stage of the proceeding. If you can't afford a lawyer, the government will provide a lawyer free of charge. Mr. Lederman, please consult with Mr. Prokopi on his rights to appeal.

MR. LEDERMAN: Yes, your Honor.

THE COURT: If he wishes to appeal, I instruct you to do so on a timely basis.

MR. LEDERMAN: Yes, your Honor.

THE COURT: Surrender date?

MR. LEDERMAN: Your Honor, his children go back to school the end of August. So if it's possible, I know it is a lengthy time, but to have a surrender time once they are in school, I would implore the Court to assign that date.

THE COURT: Did you want September?

MR. LEDERMAN: If that's possible, your Honor.

MR. BELL: The government has no objection.

THE COURT: September 9 at 2 o'clock at the facility designated by the Bureau of Prisons.

I think I have covered anything.

Is there anything I've missed.

MR. BELL: Only this, your Honor. It is not something you missed, but something I hadn't raised yet. We had initially submitted our sentencing submission to your Honor's chambers under seal. Having spoken to Mr. Lederman, it is my understanding that there actually really isn't much of a need for that. I would like to, with the Court's permission, go ahead and file our submission on ECF pursuant to the usual procedure.

THE COURT: What I do with the submissions is have them travel with the PSR rather than putting them on ECF. I don't put the defendant's materials on ECF, and I shouldn't put the government's as well. If you want me to, I will.

MR. BELL: It is not a matter I think of your doing it, your Honor. Mr. Lederman already filed his submission on ECF. Ordinarily we would do the same.

THE COURT: File yours as well.

MR. LEDERMAN: We redacted ours and provided the Court with an unredacted one, our submission.

THE COURT: You can leave it the way it is.

MR. LEDERMAN: Thank you.

THE COURT: Mr. Bell can put it on ECF.

MR. BELL: Thank you, your Honor.

THE COURT: Anything else?

MR. BELL: No, your Honor.

THE COURT: We are in recess.

Thank you very much.

(Adjourned)